

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL DAVIS-GUIDER,

Plaintiff,

-v- 17-cv-1290

CITY OF TROY, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DANIEL J. STEWART
December 5, 2022
445 Broadway, Albany, New York

FOR THE PLAINTIFF:

BRETT H. KLEIN, ESQ.
305 Broadway, Suite 600
New York, New York 10007

FOR DEFENDANT RENSSELAER COUNTY:

BAILEY, JOHNSON & PECK, P.C.
By: William C. Firth, Esq.
5 Pine West Plaza, Suite 507
Albany, New York 12205

FOR DEFENDANT CITY OF TROY

PATTISON SAMPSON GINSBERG & GRIFFIN PLLC.
BY: Michael Ginsberg, Esq.
Rhannon Gifford, Esq.
P.O. Box 208
Troy, New York 12180

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 COURT CLERK: We are back on the record. The
2 case is Michael Davis-Guider versus City of Troy and
3 others, case number 17-cv-1290.

4 Please state your appearances for the record.

5 MR. KLEIN: Brett Klein, for the plaintiff.
6 Good afternoon, Judge.

7 THE COURT: Good afternoon.

8 MR. FIRTH: Your Honor, William Firth, on
9 behalf of Dr. Sikirica and Rensselaer County.

10 THE COURT: Good afternoon to you.

11 MS. GIFFORD: Your Honor, Rhiannon Gifford
12 from Pattison, Sampson, Ginsberg & Griffin, on behalf of
13 the City of Troy, Ronald Fountain, Danielle Coonradt,
14 Charles McDonald, and Tim Colaneri.

15 THE COURT: Good afternoon.

16 MR. GINSBERG: Mike Ginsberg of Pattison,
17 Sampson, Ginsberg and Griffin, for the same defendants,
18 your Honor.

19 THE COURT: All right. Thank you. So we have
20 presently pending in this case a motion for summary
21 judgment on the issue of liability and on the issue of
22 qualified immunity.

23 Rhiannon, why don't I have you summarize the
24 position of the City defendants.

25 MS. GIFFORD: Yes, your Honor. Thank you.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 The City defendants' position, as detailed in
2 our brief, is that there's no genuine issue of material
3 fact in this matter. There was an indictment to proceed
4 with the prosecution against Mr. Davis-Guider. This
5 matter does not involve any sort of confession or nature
6 that is similar to Thomas.

7 The issue here is that the plaintiff
8 essentially seems to dispute about four statements that
9 were made at the grand jury presentation to support his
10 theory that there was perjury or police misconduct to
11 overcome the probable cause created by the indictment.

12 We submit that those four statements that he
13 relies upon are, one, not false. There's no evidence to
14 indicate that they were false or made with the intent to
15 deceive or lie; they're in response to the material
16 facts statement that was submitted by the plaintiff. We
17 detailed extensively additional evidence that supports
18 why Detective Fountain made those statements to the
19 grand jury and to prove that they are not false.

20 There's no indication or evidence submitted by
21 the plaintiff to create a question of fact as to any
22 police misconduct or inappropriate behavior that caused
23 the prosecution to proceed or the arrest from the grand
24 jury indictment to be improper.

25 For -- I think for this, it's a little

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 difficult because there are four different police
2 officers that are charged with -- or accused of
3 misconduct by the plaintiff but they kind of had
4 different roles and need to be analyzed individually.
5 For example, Danielle Coonradt, she was the responding
6 officer on the scene. She obtained a single statement
7 of essentially an excited utterance from the plaintiff
8 when she arrived on scene and asked what happened.

9 At that point in time, Officer Coonradt had no
10 idea that the child would be declared deceased at any
11 point. She had no idea that a crime had actually even
12 occurred. She was just arriving in response to the 911
13 call made by Mr. Davis-Guider. He -- the plaintiff
14 repeatedly claims that she falsified the statement that
15 he made guessing or saying that it was 11:00 when he had
16 woken up.

17 I submit that that's not only not false,
18 there's evidence she has maintained and consistently
19 testified to that statement, was in her police reports,
20 but it's not relevant. It's not relevant because when
21 Detective Fountain was presenting to the grand jury, he
22 even said and conceded the plaintiff said maybe he woke
23 up maybe 11 or 12 but he wasn't really sure. There were
24 no clocks, there were no phones available for him to be
25 precise about it.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 Simply recording a statement that was made and
2 putting it in the record as she received it cannot
3 overcome or serve as evidence that she knowingly and
4 intentionally falsified a statement. There's just no
5 evidence to support that contention. Ms. Parker even
6 said herself that Mr. Davis-Guider had alluded to or
7 potentially even being 11:00 wake-up, but he wasn't
8 certain.

9 The theme there was he didn't know exactly
10 what time it was. But Miss -- Police Officer Coonradt
11 was doing her job when she arrived on the scene to take
12 down the statement. She has really no involvement, is
13 entitled to summary judgment on all of the claims
14 against her on those grounds.

15 And turning to Charles McDonald and Tim
16 Colaneri, they are kind of in a similar boat where
17 there's really no allegations of impropriety made
18 against them. There's no threats. There's no coercion.
19 They didn't really do anything. They testified before
20 the grand jury. I believe McDonald maybe testified at
21 one pretrial hearing but didn't testify at trial. Those
22 two officers really had no involvement in the
23 prosecution at all and were not involved in any sort of
24 improper police conduct in furtherance of obtaining the
25 grand jury indictment that created the probable cause.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 THE COURT: Okay.

2 MS. GIFFORD: Detective Fountain was the only
3 individual who testified at the grand jury, and as
4 stated, plaintiff's claims really center around the four
5 misstatements that he asserts were made by Fountain;
6 however, the plaintiff's arguments are his own
7 conjecture in response to what Fountain testified to at
8 the grand jury.

9 Case law in this Circuit mandates that a plus
10 factor be presented. Some sort of corroborating
11 evidence outside of the grand jury testimony to support
12 his claim that Fountain lied or that it was a competing
13 version of events.

14 Competing versions of events are not evidence
15 in and of itself of lying or improper misconduct before
16 the grand jury, and this is important in the context of
17 noticing that Fountain is entitled to ultimate, I mean
18 absolute immunity for his grand jury testimony.

19 The plaintiff did not make any claims or
20 accusations about police misconduct by Fountain outside
21 of anything that was said during the grand jury
22 testimony, and as the case law cited in our briefs,
23 *Rehberg* and *Bonds versus City of New York* makes clear
24 the Court can't over -- the plaintiff must come forth
25 with that plus factor to try to take the testimony from

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 the grand jury outside of the absolute immunity grounds
2 that he's entitled to.

3 THE COURT: Okay.

4 MS. GIFFORD: And if -- unless the Court has
5 any other questions, I believe we will rely on the
6 briefs for the arguments.

7 THE COURT: No, I understand your argument.

8 Mr. Firth.

9 MR. FIRTH: Thank you, your Honor. As
10 Rhiannon pointed out and the Court is well aware, we're
11 dealing with another case that has a presumption of
12 probable cause by virtue of the grand jury indictment.

13 Plaintiff was required again to come forward
14 with evidence of -- on the part of Dr. Sikirica in terms
15 of suppressing evidence, committing perjury --

16 THE COURT: What was the basis for
17 Dr. Sikirica testifying that the fractured ribs were
18 caused by someone with large hands?

19 MR. FIRTH: I believe that it was reported to
20 him, your Honor, that that's what had occurred.

21 THE COURT: Who reported that to him?

22 MR. FIRTH: As I stand here now, Judge, I'm
23 not sure. I'm not sure if it's in our statement of
24 facts or in our papers. I'm not certain where that
25 information came from.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 THE COURT: I understand you're standing in
2 for Crystal.

3 MR. FIRTH: Yeah. That was my case. I
4 probably should just go home, you know. But that
5 doesn't correlate the -- that doesn't correlate with
6 Mr. Davis to -- in terms of these injuries. It was
7 reported to him as a matter of fact. It didn't
8 influence his cause of death determination or manner of
9 death determination.

10 THE COURT: Well, it influenced who the grand
11 jury is going to indict. If he says it was caused with
12 someone with large hands and the testimony was that
13 Mr. Davis-Guider had large hands, you know, I'm not sure
14 where it came from. I'm not sure what the -- what
15 the medical basis for that is.

16 MR. FIRTH: Well, Judge, nobody else --

17 THE COURT: If somebody has a purple hand that
18 caused this and there was only one person who has a
19 purple hand, you know -- I'm just trying to figure out.

20 MR. FIRTH: I'm sorry I can't answer that.
21 But the fact remains that he was the only one home alone
22 with V.D. at the time. And even if he did indicate that
23 in his report --

24 THE COURT: What about the other people who
25 did the -- the CPR chest compressions on the child?

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 MR. FIRTH: Sure.

2 THE COURT: I mean, how do -- what's the
3 evidence that it was -- it was caused by something that
4 he did as opposed to them?

5 MR. FIRTH: He didn't say that it was caused
6 by Mr. Davis at all.

7 THE COURT: How do they know that someone with
8 large hands was the one who caused the fracture of the
9 ribs and the severing of the liver?

10 MR. FIRTH: How did he know that it was
11 Mr. Davis?

12 THE COURT: How does he know someone with
13 large hands?

14 MR. FIRTH: I don't think that he does know
15 that it was someone with large hands. I think he just
16 talks about it anecdotally -- anecdotally in his report,
17 and for purposes of Dr. Sikirica, I'm not sure it
18 matters, Judge, because how would that amount to a
19 constitutional violation? It's just something that he
20 put in his report. You know, the inclusion of that is
21 not what fueled this prosecution against Mr. Davis. He
22 was the only one with V.D. at the time.

23 And plaintiff also takes issue with the fact
24 that he did not mention in his autopsy report the number
25 of compressions that were applied. He does certainly

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 indicate that there was a history of -- of CPR, and he
2 testified before the grand jury that these were not
3 CPR-related injuries. He could not have been more
4 clear, and he even testified to the fact that this was
5 something -- these injuries are something that you'd
6 expect to see only in the case of a car accident but no
7 other accident would result in these types of injuries.

8 THE COURT: Okay.

9 MR. FIRTH: You know, and also along these
10 same lines, Judge, the prosecution was aware of the
11 number of compressions, defense team was aware of the
12 number of compressions, and it was -- it was ferreted
13 out at the trial and at the grand jury testimony again
14 that these were not CPR-related injuries. They were
15 caused by blunt-force trauma.

16 And again, Mr. Davis was the only one who was --
17 only one who there was. There's been no indication that
18 anybody else was there. And in the absence of any
19 evidence contrary to having, you know, an accident be
20 the basis of this, they move forward the prosecution.
21 This was Dr. Sikirica's medical judgment, again, in his
22 experience in conducting over 10,000 autopsies, that
23 these were severe injuries. The injury to the liver
24 just could not have happened from CPR.

25 Did he get it wrong? Probably not, Judge.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 But, you know, at most, that would be negligent.
2 Certainly not amount to fraud or suppression of
3 evidence -- of evidence required to overcome the
4 presumption of probable cause in this case.

5 And, your Honor, I could continue. Let me
6 just touch base briefly on the conspiracy claim. The
7 plaintiff refers -- Brett, very respectfully, rather
8 uniquely, your Honor, he does not have much to work with
9 here to, quote-unquote, at least a tacit agreement with
10 Troy P.D. and prosecutors to label this as a homicide.
11 There's just no evidence of that. There's a lot of
12 speculation, circumstantial evidence at most.

13 And the *Monell* claim against the county relies
14 on two cases, *McElheny* and *Thomas*. Certainly the *Thomas*
15 case does not put the county on notice that Dr. Sikirica
16 would require additional supervision and the *McElheny*
17 case relies on the inadmissible news article, nothing
18 more, and those talk about dueling medical witnesses,
19 which is at the very heart. Medical judgments, medical
20 opinion, not -- not a constitutional tort.

21 Unless Your Honor has any specific questions,
22 I will rely on my brief for the remainder.

23 THE COURT: No, I think I'll hear from
24 Mr. Klein at this point in time.

25 MR. FIRTH: Thank you, your Honor.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 MR. KLEIN: Thank you, Judge. Your Honor,
2 Michael Davis was arrested and prosecuted in a case
3 where there was, again, in the light most favorable to
4 Mr. Davis, similar to a case earlier today, the Thomas
5 case, no crime.

6 Mr. Davis testified consistently, stated to
7 police consistently on the day of the death of V.D. what
8 happened, that she was not feeling well for a couple of
9 days, that she awoke -- she was sick that morning, I
10 think diarrhea, went back to sleep and was then
11 unresponsive. He tried calling 911, but didn't have a
12 phone that worked in the house. Tried to do some chest
13 compressions himself, maybe four or five at most and
14 then went and made a call and then he -- police and his
15 girlfriend, the mother the child, all came back.

16 What happened here was not a crime.
17 Plaintiff's expert also -- the -- the same expert as in
18 Thomas, the deputy county medical center from Erie
19 County had -- will testify to the jury that to a
20 reasonable degree of medical certainty this was a sudden
21 unexplained death, phenomenon occurs, that the blood
22 present in the liver was not consistent with -- with the
23 child bleeding out from that before CPR was attempted,
24 and on and on as set forth in our papers.

25 THE COURT: So why isn't, as Mr. Firth said,

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 why isn't that competing medical testimony rather
2 than -- is your doctor saying that Dr. Sikirica
3 falsified an autopsy?

4 MR. KLEIN: Right. So -- so this -- similar
5 to the pattern that we have seen, Judge, *Davis* and
6 *McElheny*, this is a case where we go through this
7 extensively in our papers, without any link of this
8 death whatsoever to Mr. Davis other than that he's
9 present when she's found unresponsive, no other
10 reason -- no reason to think which is not probable cause
11 to arrest. It's -- it's mere presence at the scene
12 of -- in this case, as in *Davis* and other cases, where
13 there's a natural causes death in the light most
14 favorable to the plaintiff.

15 And Dr. Sikirica, within hours of meeting with
16 the police, getting their statement of their interview
17 with him where he describes his three or four or five
18 CPR attempts with his large hands, says on the death
19 certificate this is a homicide.

20 And that starts a chain of events that is
21 foreseeable that Mr. Davis and Dr. Sikirica acknowledges
22 that by calling this a homicide, that this set of chain
23 of events that would likely result in grand jury action
24 and a murder charge, and he would not -- and
25 Dr. Sikirica concedes that this is bias cascade that we

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 have seen in other cases, started with the information
2 given to him by police.

3 So it's not that we're saying per se it's
4 improper for the medical examiner to get information for
5 their forensic review of a death to evaluate all the
6 factors. It's certainly -- we have cited the medical
7 examiner standards. It's not recommended but -- but
8 beyond that, what's -- the issue in this case is
9 different.

10 Is it -- is there an inference that a
11 reasonable jury could credit that Dr. Sikirica was given
12 this story from the police, their suspicions of a
13 homicide, and he basically crafted his determination
14 without regard for natural causes.

15 THE COURT: What proof do you have of that?
16 He's obviously denied it. I mean, Second Circuit is
17 pretty clear about conspiracies, that there's got to be
18 some proof with regard to it.

19 MR. KLEIN: We do have -- we do lay out,
20 Judge, in our -- in our papers, I believe, that there
21 were labs or swabs done to determine if there were
22 natural causes potentially contributing just like in the
23 Thomas case, where there were -- there was evidence
24 of streptococcus pneumonia that came back. I believe
25 similarly here there were tests that were done or could

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 have been done but Dr. Sikirica deemed this a homicide
2 after speaking with the police. There's no -- even if
3 that's the case, there's no reason to think Michael
4 Davis committed a homicide, and as the defendants
5 maintain, there's no suggestion here that CPR resulted
6 in her -- in V.D.'s death.

7 So the suggestion here is that there's some
8 period of time although these goalposts seem to have
9 change and that's the essence of the claim here of this
10 fabricated false testimony, not that the child died but
11 that Michael Davis was responsible for this blunt-force
12 trauma and a homicide when there was no evidence of it.

13 The only evidence that Dr. Sikirica knew in
14 rendering his autopsy was what the police -- to answer
15 your question before -- what they showed him and told
16 him based on their interview with Michael Davis, which
17 they acknowledge, did not give them probable cause to
18 arrest.

19 THE COURT: All right.

20 MR. KLEIN: It's only when Dr. Sikirica takes
21 that information and links it to this large hand that
22 they then, you know, prosecuted Mr. Davis based on this
23 bias cascade. So this information --

24 THE COURT: All right. So with regard to --
25 I'm just trying to break this down. Okay? Dr. Sikirica

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 does the autopsy, comes to a conclusion. Your doctor
2 reviews the medical records, comes to a different
3 conclusion, correct? Is it fair to say that reasonable
4 medical professionals can disagree?

5 MR. KLEIN: Not in our view. Not in the view
6 of our expert that --

7 THE COURT: Is your expert testifying that the
8 conclusions that Dr. Sikirica -- were false, fraudulent
9 or amounted to malpractice?

10 MR. KLEIN: Yeah, that's the essence of her
11 testimony. That his -- his -- his -- his medical --
12 just as in the Thomas case, this was a -- without
13 question in her mind to a reasonable degree of
14 professional certainty a case of natural cause of death,
15 and she absolutely disagrees that there's any other way
16 to look at this.

17 THE COURT: But in Thomas, we have the five
18 other doctors who have a different view with regard to
19 that.

20 MR. KLEIN: Well, there were different -- it's
21 very nuance, Judge. There's views about the fluid
22 collection in the brain, about a hematoma, and there's
23 views about the -- the spreading of the fontanelles in the
24 brain and the -- I believe it's called the -- the
25 sutures of the brain, the brain -- of the skull

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 swelling, whether that could be consistent with trauma.

2 It doesn't necessarily mean there was a trauma
3 consistent with abuse. There's trauma that results from
4 medical staff touching the child from postmortem
5 contact, from blood filling up in the brain due to an
6 overwhelming septic infection in that case resulting in
7 meningitis. In this case, there's no evidence -- just
8 like in that case, there's no evidence of any physical
9 struggle. There's no bruising. There's no evidence --
10 sign of any trauma whatsoever.

11 But what we have is this being classified as a
12 homicide after a meeting with the police, further
13 meetings with the police after they don't -- they
14 concede they don't have enough to rope Mr. Davis in in
15 this case, and then -- and efforts by the police to get
16 Mr. Davis to give them more. To confess. They take him
17 in the same room that they had Mr. Thomas in.

18 And then the officers conveying to prosecutors
19 a story that is disputed, and I think that's really the
20 thing here, as in the Davis case. The police will say
21 we have this information written down that the plaintiff
22 said this or that, and so they just merely pass that on.
23 But the -- but that misses a crucial issue at this stage
24 of the proceedings, Judge.

25 Plaintiff denies this information was ever

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 said about the timing and such. But it created and it
2 was material enough to be presented. It was influential
3 enough to prosecutors that it resulted in the testimony
4 being given based on statements made to prosecutors
5 which gets outside of *Rehberg* that shows that
6 Mr. Davis didn't have -- didn't have a credible story,
7 and this was false and this was disputed and he was
8 found innocent at trial.

9 So, when you take the conduct together,
10 this initial determination of a homicide after speaking
11 with the officers about their feelings about this,
12 having no reason to think that Mr. Davis was anything
13 but merely present when a child who was sick woke up
14 unresponsive, completely disregarding the evidence of
15 natural causes, of a natural cause of death, later
16 conceding that if she died in extreme -- due to CPR from
17 EMTs or Mr. Davis, that wouldn't be a homicide but
18 maintaining that something happened here, resulting in
19 this severe trauma and sticking to their story.

20 I think a jury could find that that is
21 manufactured evidence in an effort to come up with a
22 story that's consistent with the police theory of what
23 happened here. It's --

24 THE COURT: A lot of speculation.

25 MR. KLEIN: I don't think so, Judge.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 THE COURT: Let me ask you this, then. Were
2 there any -- what meetings were there between what
3 detectives and what police officers and Dr. Sikirica
4 where they suggested to him that they make a certain
5 finding? Do we have any evidence of that?

6 MR. KLEIN: In terms of suggesting the -- only
7 they were at the meetings and they discussed the --

8 THE COURT: How many meetings were there?

9 MR. KLEIN: There were at least -- there was
10 one I believe a day after the -- the child was found
11 dead, another one after Mr. Davis was interviewed within
12 a couple of weeks after that, and then another one again
13 in mid March and then there were meetings with
14 prosecutors several months later when the autopsy was
15 created.

16 And this autopsy, again, I think, again,
17 credibility issues was -- was drafted by someone who's
18 working for many counties in Upstate New York, not just
19 Rensselaer, conducting several hundred autopsies a year,
20 testifies that each one takes days to do. And so based
21 on that, those numbers, it would seem impossible for him
22 to have been doing less than a few per day, and then he
23 does a report months and months and months later.

24 And they paint this picture of -- of -- after
25 these -- tying Mr. Davis to this crime, A, when -- and

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 Mr. Davis is -- in a light most favorable to Mr. Davis,
2 there's no credible medical evidence of any crime. Even
3 the officers found, I believe, gave a statement that it
4 was his understanding when they made one last effort to
5 talk to Mr. Davis in an interrogation room after the
6 autopsy was finally issued months later that it was his
7 understanding from speaking with Dr. Sikirica that
8 Mr. Davis squeezed the child during CPR effort and broke
9 the rib and caused the rib to lacerate the liver.

10 I don't think there's any question, the rib
11 didn't lacerate the liver and that these injuries,
12 again, per Mr. Davis' experts and I believe per
13 Dr. Sikirica wouldn't have caused the death. So, there
14 was this effort to get their man and to do what they had
15 to do to get someone to get Mr. Davis responsible for
16 this crime and it failed in this case and the Thomas
17 case it succeeded until it failed.

18 But this is really a striking pattern. It's
19 not a coincidence and, you know, we have a credible
20 evidence of natural cause of death and no trauma in both
21 cases and -- and extreme efforts to prosecute someone
22 when there was no reason to believe that this person
23 committed any crime.

24 THE COURT: All right.

25 MR. KLEIN: They say that he was calm, not

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 acting like someone who just lost a child that he loved.
2 He said he was distraught and crying. They say that he
3 wasn't clear about the timing. He said he never said
4 that and they paint this image of --

5 THE COURT: Those are factual issues in every
6 criminal case I have ever had.

7 MR. KLEIN: Right, but they disputed factual
8 issues. So for the defense to say here, as they did in
9 our other case today, Thomas, well, they wrote down
10 contemporaneously this or that so there's no evidence of
11 the contrary, there is. Just want to state for the
12 record these are disputed facts and they all together
13 led to this malicious prosecution in violation of due
14 process.

15 THE COURT: Okay. Thank you.

16 MR. KLEIN: Thank you, Judge.

17 THE COURT: All right. Anything further from
18 the defense counsel?

19 Mr. Firth, anything further?

20 MR. FIRTH: Your Honor, all the points made by
21 Brett are addressed in our brief.

22 THE COURT: Okay. Anything further from the
23 state defendants?

24 MS. GIFFORD: I just wanted to briefly address
25 the point about the conflicting statements in

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 Mr. Klein's final point that they are disputed based
2 upon Mr. Davis-Guider.

3 The plaintiff's mere conjecture and
4 speculation surmise isn't enough to create the question
5 of fact, and as my response to his material statements
6 makes clear, there's significant corroborating evidence
7 outside of what the police said was the version of
8 events that they recall.

9 As a -- stated, we have statements from Miss
10 Parker who corroborated the timing issue in her written
11 statement to the police. There's pictures of the bed.
12 There's the EMTs' own statements, which almost all of
13 them agree that Mr. Davis-Guider appeared pretty calm,
14 subdued. All of that evidence is before the Court.
15 It's not simply just two versions of events from the
16 plaintiff and the defendant.

17 There's significant other corroborating
18 evidence that hasn't been addressed or discussed by the
19 plaintiff or said to have been included in this scheme
20 to frame his client. I just wanted to address that kind
21 of misstatement in my thought.

22 THE COURT: Thank you. Thank you both. Thank
23 you both -- all three of you -- four of you. So I
24 appreciate the substance of this oral argument. We will
25 go ahead and issue a decision on both cases in due

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

1 course.

2 Is there anything further on behalf of the
3 plaintiff you want me to address while we're here?

4 MR. KLEIN: Just one second, Judge. I will
5 look at my notes. No, Judge, I think that's all for us.
6 Thank you so much.

7 THE COURT: All right. On behalf of the
8 county? Dr. Sikirica? Anything further?

9 MR. FIRTH: No, your Honor.

10 THE COURT: On behalf of the city, anything
11 further?

12 MS. GIFFORD: No. Thank you, your Honor.

13 THE COURT: All right. Thanks, everybody.

14 (Proceeding concluded.)

15 * * * * *

16

17

18

19

20

21

22

23

24

25

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY

DAVIS-GUIDER v CITY OF TROY, ET AL. - 17-cv-1290

C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, CRR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Lisa L. Tennyson

Lisa L. Tennyson, RMR, RPR, FCRR

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY